

1 Jon S. Musial, (#012828)  
2 **LAW OFFICE OF JON S. MUSIAL**  
3 6245 E. Nisbet Road  
4 Scottsdale, Arizona 85254  
5 Email: [Jon.Musial@MusialLawOffice.com](mailto:Jon.Musial@MusialLawOffice.com)  
6 Telephone: (480) 951-0669  
7 Counsel for Everett S. Butler, as Successor Trustee

8  
9  
10 **IN THE UNITED STATES BANKRUPTCY COURT**  
11 **FOR THE DISTRICT OF ARIZONA**  
12

13 In re:

14 ROBERT PARKER JOHNSON,

15 Debtor

Chapter 13 Proceedings

Case No. 2:17-bk-15069-BMW

**FED. R. BANKR. P. 9019 JOINT  
MOTION TO APPROVE  
SETTLEMENT AGREEMENT;  
AND  
MOTION FOR EXPEDITED HEARING**

16 Pursuant to Bankruptcy Rule 9019, the Debtor, Robert Parker Johnson (“Debtor”)  
17 and creditor, Everett S. Butler, as Successor Trustee of the Survivor’s Trust Created under the  
18 Deem Living Trust, dated July 25, 2009 (“Butler” and together with Debtor the “Parties”), by  
19 and through undersigned counsel, hereby jointly move the Court for an order approving the  
20 Settlement reached at the Settlement conference held before the Honorable Paul Sala on  
21 August 16, 2018, by and between the Debtor and Butler. The Settlement Agreement was  
22 negotiated and placed on the record by the Honorable Paula Sala at the settlement  
23 conference held on August 16, 2018, as reflected in Docket Nos. 44 and 45, and is  
24 incorporated as a part of this Motion.

25 The Parties also request that the Court consider approval of the Settlement  
26 Agreement on an expedited basis pursuant to 11 U.S.C. §§ 101, 102(1) and Rule 9006(c)(1),  
27 subject to fifteen (15) days negative notice to all parties-in-interest. This Motion is  
28 supported by the attached Memorandum of Points and Authorities, which is incorporated  
herein by this reference.

1 DATED this 20<sup>th</sup> day of August, 2018.

2  
3 LAW OFFICE OF JON S. MUSIAL

4 

5  
6 /s/ Jon S. Musial (#012828)  
7 6245 E. Nisbet Road  
8 Scottsdale, Arizona 85254

9 And

10 NEELEY LAW FIRM, PLC

11  
12 /s/ Chris Dutkiewicz  
13 Chris Dutkiewicz, 024962  
14 2250 E. Germann Rd., Suite 11 Chandler, AZ  
15 85286

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17  
18 1. Debtor, Robert Parker Johnson commenced his Chapter 13 case on or about  
19 December 22, 2017.

20 2. Butler is the holder of a certain promissory Balloon Note, February 23, 2007,  
21 as amended, renewed and extended, in the original face amount of Fifty Five Thousand  
22 Dollars (\$55,000.00). The Balloon Note was amended, renewed, extended and modified in  
23 that certain Modification of Balloon Note, dated October 8, 2012, which changed the final  
24 payment amount to \$58,862.40 (assuming compliance with all other terms) and extended the  
25 final payment date five years to August 1, 2017 (The Balloon Note and Modification of  
26 Balloon Note are hereinafter collectively referred to as the "Balloon Note").

27 3. The Balloon Note is secured by a "DEED OF TRUST (Securing Balloon  
28 Note)" of even date which was duly and properly recorded on February 28, 2007, in the

1 Maricopa County Recorder's office at 2007-0240233, covering the following property,  
2 which includes a mobile home affixed to the real property:

3 LOT 46, SCOTTSDALE MOBILE ESTATES AMENDED, ACCORDING TO  
4 BOOK 119 OF MAPS, PAGE 13, RECORDS OF MARICOPA COUNTY,  
5 ARIZONA. A.P.N.: 131-15-062

6 (hereinafter the "Property"). The DEED OF TRUST (Securing Balloon Note) was amended  
7 by that certain AMENDMENT TO DEED OF TRUST (Securing Balloon Note), dated  
8 October 8, 2012 and recorded in the Maricopa County Recorder's office at 2012-0929206  
9 on October 12, 2012, and hereinafter collectively referred to as the "Deed of Trust".

10 4. The Deed of Trust was assigned to Butler by that certain "ASSIGNMENT  
11 OF DEED OF TRUST (Participation Interest Partial Assignment)", recorded on May 1,  
12 2007, in the Maricopa County Recorder's office at 2007-0506124 and that certain  
13 "ASSIGNMENT OF BENEFICIAL INTEREST UNDER DEED OF TRUST", recorded on  
14 October 4, 2012, in the Maricopa County Recorder's office at 2012-0901877. The Balloon  
15 Note, Deed of Trust and Assignments are attached as Exhibits to the proof of claim filed  
16 concurrently herewith and incorporated by reference.

17 5. Debtor filed a chapter 13 petition on December 22, 2017. As of the date that  
18 the bankruptcy was filed, the total amount due on the Balloon Note and Deed of Trust was  
19 \$74,204.65, including the outstanding principal balance of \$58,321.56, accrued and accruing  
20 interest at the rate of 13% and a per diem rate of \$20.7721, plus attorneys' fees, and other  
21 charges, as more fully set forth in the Proof of claim filed by Butler.

22 6. Butler filed an objection to the Debtor's First Amended Plan asserting  
23 numerous issues, including the lack of feasibility. Pursuant to the Chapter 13 Trustee's  
24 recommendations, Debtor was required to resolve the Butler Objection before a Stipulated  
25 Order of Confirmation could be lodged.

26 7. Pursuant to the Settlement Conference held before the Honorable Paul Sala  
27 on August 16, 2018, the parties agreed to a settlement and placed the terms and conditions  
28 on the record. The settlement is subject to Court approval and generally provides as  
follows:

- a. Butler shall receive a payment from the funds currently being held by the Chapter 13 Trustee in the amount of \$1,500.00, representing adequate protection, upon approval of the Settlement.
- b. Debtor shall have until 5:00 p.m., December 1, 2018, to vacate the Property and turn over the keys to the Property to Butler.
- c. Upon approval of the Settlement, the automatic stay shall immediately terminate as to the Property and as to Butler's activities to exercise his rights in and to the Property.
- d. Debtor represented and warranted that Debtor has not liened or encumbered the Property or personal property thereon, voluntarily or involuntarily, by operation of law or otherwise, except the Deed of Trust held by Butler.
- e. Butler shall, in his sole and absolute discretion, be entitled to foreclose on the Property upon approval of the Settlement or demand and receive a deed in lieu of foreclosure from the Debtor.
- f. Debtor shall be a tenant on the Property until he vacates the Property, subject to all obligations and duties imposed by Arizona law on tenants, except the obligation to pay rent. Debtor shall have the obligation to maintain the Property in good working order during the tenancy.
- g. Butler shall be a landlord to the Debtor until Debtor vacates the Property, subject to all obligations and duties imposed by Arizona law on landlords, except that Butler shall have no obligation to maintain or repair the Property during the tenancy. Furthermore, Butler shall have no obligation to store, sell or return any personal property remaining on the Property after the keys have been turned over to Butler.
- h. In the event Debtor vacates the Property and turns over the keys to Butler by 5:00 p.m. on or before the 30<sup>th</sup> calendar day after Court approval of the

1 Settlement, Butler shall pay the Debtor the sum of \$5,000.00 within seven  
2 (7) calendar days of receipt of the keys to the Property.

3 i. Finally, the parties agreed to seek expedited approval of the Settlement.

4 8. The Debtor believes approval of the Settlement is in the best interests of the  
5 Debtor and the estate and should be approved.

6 9. Approval of the Settlement Agreement on an expedited basis is appropriate  
7 under the circumstances of this case pursuant to 11 U.S.C. §§101, 102(1) and Rule  
8 9006(c)(1), Federal Rules of Bankruptcy Procedure, for the reasons that (a) there are few  
9 other creditors in the case and the settlement resolves the central issue in the case, (b) the  
10 settlement will allow the debtor to propose a second amended plan capable of confirmation,  
11 (c) will reduce Debtors financial obligations, (d) the procedure outlined herein is  
12 administratively convenient, cost effective and will expedite consummation of a settlement  
13 with Butler, and (d) the Debtor does not anticipate any objection to the settlement.

#### 14 **LEGAL AUTHORITY**

#### 15 ***The Court Should Approve the Proposed Settlement and Compromise Pursuant to*** 16 ***Bankruptcy Rule 9019.***

17 The authority to compromise a controversy is set forth in Bankruptcy Rule 9019(a)  
18 of the Federal Rules of Bankruptcy Procedure, which provides in the pertinent part:

19 On motion by the trustee and after notice and a hearing, the court may  
20 approve a compromise or settlement.

21 Rule 9019(a), Federal Rules of Bankruptcy Procedure. In reviewing proposed settlements,  
22 the standard applied by courts under the former Bankruptcy Act is also applicable under the  
23 Bankruptcy Code. As stated by the Supreme Court in *Protective Committee Stockholder of*  
24 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968), the Court should find that the  
25 proposed settlement is “fair and equitable” based on an “educated estimate of the  
26 complexity, expense, and likely duration of...litigation, the possible difficulties of collecting  
27 on any judgment which might be obtained and all other factors relevant to a full and fair  
28 assessment of the wisdom of the proposed compromise.” *Protective Committee* at 425.

The Ninth Circuit has held:

1 In determining the fairness, reasonableness and adequacy of a proposed  
2 settlement agreement, the court must consider (a) the probability of success  
3 in the litigation; (b) the difficulties, if any, to be encountered in the matter of  
4 collection; (c) the complexity of the litigation involved, and the expense,  
5 inconvenience and delay necessarily attending it; and (d) the paramount  
6 interest of the creditors and a proper deference to their reasonable views in  
7 the premises

8  
9 *In re A&C Properties*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986), *cert. denied sub nom, Martin v.*  
10 *Robinson*, 479 U.S. 865 (1986); *In re Woodson*, 839 F.2d 610 (9<sup>th</sup> Cir. 1988).

11 A court, however, should not substitute its own judgment for the judgment of a  
12 trustee or the debtor, *In re Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984). In  
13 reviewing a proposed settlement, a court “is not to decide the numerous questions of law and  
14 fact...but rather to canvas the issues and see whether the settlement “ fall(s) below the  
15 lowest point in the range of reasonableness. *In re W.T. Grant Company*, 699 F.2d 599, 608  
16 (2<sup>nd</sup> Cir.) *cert. denied*, 464 U.S. 822 (1983) (quoting, *Newman v. Stein*, 464 F.2d 689, 693  
17 (2<sup>nd</sup> Cir. 1972) *cert. denied sub nom; Benson v. Newman*, 409 U.S. 1039 (1974). A “mini-  
18 trial” on the merits of the underlying cause of action is not required. *In re Blair*, 538 F.2d  
19 849, 851-52 (9<sup>th</sup> Cir. 1976); *In re Walsh Construction, Inc.*, 669 F.2d 1325, 1328 (9<sup>th</sup> Cir.  
20 1982).

21 In the present case, the following factors identified by the Ninth Circuit in *A&C*  
22 *Properties* mandate in favor of court approval of the Settlement Agreement:

23 1. *Probability of success in the litigation.* The Debtor understands there are  
24 risks associated with any litigation. Independent of the merits of the litigation, the Debtor  
25 has determined that the Settlement is in the best interests of the Debtor and the Estate. The  
26 Debtor believes that approval of the Settlement is the best alternative to lengthy and costly  
27 litigation.

28 2. *Difficulties with collection.* This factor is not applicable as the Debtor has  
not sought any form of relief from or judgment against Butler. Debtor believes that the  
reduced payment obligations of the Debtor is clearly beneficial and is preferable to the risks  
of proceeding with litigation.

3. *Complexity of Issues.* The issues and claims of all parties are not complex, but would be costly to pursue. The Debtor has determined that settlement of the claims of the parties in accordance with the agreement reached at the Settlement conference is preferable to litigating these issues.

4. *The Interest of creditors.* The interests of creditors of the estate are well-served by the Settlement. The Debtor and Butler would incur substantial fees in completing the prosecution and defense of the claims. In addition, the proposed settlement reduces claims against the estate, thus increasing the potential recovery to other creditors.

## CONCLUSION

Based on all of the foregoing, the Debtor requests that the Court approve the Settlement Agreement, subject to fifteen (15) days negative notice to all parties-in-interest.

DATED this 20<sup>th</sup> day of August, 2018.

LAW OFFICE OF JON S. MUSIAL

Jon S Murial

/s/ Jon S. Musial (#012828)  
6245 E. Nisbet Road  
Scottsdale, Arizona 85254

And

NEELEY LAW FIRM, PLC

/s/ Chris Dutkiewicz  
Chris Dutkiewicz, 024962  
2250 E. Germann Rd., Suite 11 Chandler, AZ  
85286

1 Copy of the foregoing served by regular  
first class mail and/or email  
2 this 20<sup>th</sup> day of August, 2018, to:

3 Russell Brown  
CHAPTER 13 TRUSTEE  
4 SUITE 800  
3838 NORTH CENTRAL AVENUE  
5 PHOENIX, AZ. 85012-1965  
6 Email: [mail@ch13bk.com](mailto:mail@ch13bk.com); [ecfmailclient@ch13bk.com](mailto:ecfmailclient@ch13bk.com)

7 KENNETH L NEELEY  
2250 E. GERMANN RD., SUITE 11  
8 CHANDLER, AZ 85286  
9 Email: [ecf@neeleylaw.com](mailto:ecf@neeleylaw.com)

10 United States Trustee  
Region 14  
11 230 N. 1st Ave., Suite 204  
Phoenix, AZ 85003  
12 [USTPRegion.14.PHX.ECF@USDOJ.GOV](mailto:USTPRegion.14.PHX.ECF@USDOJ.GOV)

13 Nancy K. Swift  
14 **BUCHALTER A PROFESSIONAL CORPORATION**  
16435 North Scottsdale Road, Suite 440  
15 Scottsdale, AZ 85254-1754  
16 [nswift@buchalter.com](mailto:nswift@buchalter.com)

17  
18 /S/ Jon S. Musial